

1 Alan E. Kassan, State Bar No. 113864  
 2 e-mail: akassan@kantorlaw.net  
 3 Peter S. Sessions, State Bar No. 193301  
 4 e-mail: psessions@kantorlaw.net  
 5 KANTOR & KANTOR, LLP  
 19839 Nordhoff Street  
 Northridge, CA 91324  
 Telephone: (818) 886-2525  
 Facsimile: (818) 350-6272

E-FILING

6 Attorneys for Plaintiff  
 7 Christine Gilmour

ADR

2008 JUN -5 A.M. 10:02

RICHARD W. WIEKING  
 CLERK  
 U.S. DISTRICT COURT  
 NO. DIST. OF CA. S.J.

## UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE

11 CHRISTINE GILMOUR,  
 12 Plaintiff,

13 vs.

14 AETNA LIFE INSURANCE  
 15 COMPANY; CIRCUIT CITY  
 16 STORES, INC. LONG TERM  
 17 DISABILITY PLAN,

18 Defendants.

C08. 02803

COMPLAINT FOR:

BREACH OF THE EMPLOYEE  
 RETIREMENT INCOME  
 SECURITY ACT OF 1974;  
 ENFORCEMENT AND  
 CLARIFICATION OF RIGHTS;  
 PREJUDGMENT AND  
 POSTJUDGMENT INTEREST;  
 AND ATTORNEYS' FEES AND  
 COSTS

19  
 20 Plaintiff Christine Gilmour herein sets forth the allegations of her complaint  
 21 against Defendants Aetna Life Insurance Company and Circuit City Stores, Inc. Long  
 22 Term Disability Plan.

PRELIMINARY ALLEGATIONS

23  
 24  
 25 1. Jurisdiction: This action is brought under 29 U.S.C. §§ 1132(a), (e), (f)  
 26 and (g) of the Employee Retirement Income Security Act of 1974 (hereinafter  
 27 "ERISA") as it involves a claim by Plaintiff for employee benefits under an employee  
 28 benefit plan regulated and governed under ERISA. Jurisdiction is predicated under

1 these code sections as well as 28 U.S.C. § 1331 as this action involves a federal  
2 question. This action is brought for the purpose of recovering benefits under the  
3 terms of an employee benefit plan, enforcing Plaintiff's rights under the terms of an  
4 employee benefit plan, and to clarify Plaintiff's rights to future benefits under the  
5 employee benefit plan named as Defendant. Plaintiff seeks relief, including but not  
6 limited to: payment of benefits, prejudgment and postjudgment interest, and  
7 attorneys' fees and costs.

8       2. Plaintiff was at all times relevant an employee of Circuit City Stores, Inc.  
9 and a resident of the County of Monterey, State of California.

10       3. Plaintiff is informed and believes that Defendant Aetna Life Insurance  
11 Company ("Aetna") is a corporation with its principal place of business in the State of  
12 Connecticut, authorized to transact and transacting business in the Northern District  
13 of California and can be found in the Northern District of California. Aetna is the  
14 insurer of benefits under the Circuit City Stores, Inc. Long Term Disability Plan,  
15 (hereinafter "LTD Plan") and acted in the capacity of a plan administrator.

16       4. Plaintiff is informed and believes that Defendant LTD Plan is an  
17 employee welfare benefit plan regulated by ERISA, established by Circuit City  
18 Stores, Inc., under which Plaintiff is and was a participant, and pursuant to which  
19 Plaintiff is entitled to Long Term Disability ("LTD") benefits. Pursuant to the terms  
20 and conditions of the LTD Plan, Plaintiff is entitled to LTD benefits for the duration  
21 of Plaintiff's disability, for so long as Plaintiff remains disabled as required under the  
22 terms of the LTD Plan. The LTD Plan is doing business in this judicial district, in  
23 that it covers employees residing in this judicial district.

24       5. Defendants can be found in this judicial district and the Defendant Plan  
25 is administered in this judicial district. The LTD claim at issue herein was also  
26 specifically administered in this judicial district. Thus, venue is proper in this judicial  
27 district pursuant to 29 U.S.C. § 1132(e)(2).  
28

**FIRST CLAIM FOR RELIEF AGAINST ALL DEFENDANTS**  
**FOR PLAN BENEFITS, ENFORCEMENT AND CLARIFICATION OF**  
**RIGHTS, PREJUDGMENT AND POSTJUDGMENT INTEREST, AND**  
**ATTORNEYS' FEES AND COSTS**

**(29 U.S.C. § 1132(a)(1)(B))**

6. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

7. At all times relevant, Plaintiff was employed by Circuit City Stores, Inc. and was a covered participant under the terms and conditions of the LTD Plan.

8. During the course of Plaintiff's employment, Plaintiff became entitled to benefits under the terms and conditions of the LTD Plan. Specifically, while Plaintiff was covered under the LTD Plan, Plaintiff suffered a disability rendering Plaintiff disabled as defined under the terms of the LTD Plan.

9. Pursuant to the terms of the LTD Plan, Plaintiff made a claim to Aetna for LTD benefits under the LTD Plan. On July 19, 2007, Plaintiff's claim for LTD benefits was denied by Aetna on the ground that she did not meet the LTD Plan definition of disability. Plaintiff appealed this determination. Despite overwhelming evidence of a covered LTD claim, on December 21, 2007, Aetna erroneously and wrongfully continued to uphold its prior determination denying Plaintiff's claim for LTD benefits.

10. Defendants Aetna and the LTD Plan breached the Plan and violated ERISA in the following respects:

- (a) Failure to pay LTD benefit payments to Plaintiff at a time when Aetna and the LTD Plan knew, or should have known, that Plaintiff was entitled to those benefits under the terms of the LTD Plan, as Plaintiff was disabled and unable to work and therefore entitled to benefits. Even though the LTD Plan and Aetna had such knowledge, Aetna denied Plaintiff's LTD benefits;

- 1 (b) Failure to provide a prompt and reasonable explanation of the  
2 basis relied on under the terms of the LTD Plan documents, in  
3 relation to the applicable facts and LTD Plan provisions, for the  
4 denial of Plaintiff's claims for LTD benefits;
- 5 (c) After Plaintiff's claim was denied in whole or in part, Aetna failed  
6 to adequately describe to Plaintiff any additional material or  
7 information necessary for Plaintiff to perfect her claim along with  
8 an explanation of why such material is or was necessary;
- 9 (d) Concealing and withholding from Plaintiff the notice requirements  
10 Aetna and the LTD Plan were required to provide Plaintiff  
11 pursuant to ERISA and the regulations promulgated thereunder,  
12 particularly Code of Federal Regulations § 2560.503-1(f)-(g),  
13 inclusive; and
- 14 (e) Failing to properly and adequately investigate the merits of  
15 Plaintiff's disability claim and failing to provide a full and fair  
16 review of Plaintiff's claim.

17 11. Plaintiff is informed and believes and thereon alleges that Defendants  
18 wrongfully denied her disability benefits under the LTD Plan by other acts or  
19 omissions of which Plaintiff is presently unaware, but which may be discovered in  
20 this future litigation and which Plaintiff will immediately make Defendants aware of  
21 once said acts or omissions are discovered by Plaintiff.

22 12. Following the denial of benefits under the LTD Plan, Plaintiff exhausted  
23 all administrative remedies required under ERISA, and Plaintiff has performed all  
24 duties and obligations on Plaintiff's part to be performed under the LTD Plan.

25 13. As a proximate result of the aforementioned wrongful conduct of the  
26 LTD Plan and Aetna, and each of them, Plaintiff has damages for loss of disability  
27 benefits in a total sum to be shown at the time of trial.  
28

1 14. As a further direct and proximate result of this improper determination  
2 regarding Plaintiff's LTD claim, Plaintiff in pursuing this action has been required to  
3 incur attorneys' costs and fees. Pursuant to 29 U.S.C. § 1132(g)(1), Plaintiff is  
4 entitled to have such fees and costs paid by Defendants.

5 15. The wrongful conduct of the LTD Plan and Aetna has created  
6 uncertainty where none should exist, therefore, Plaintiff is entitled to enforce her  
7 rights under the terms of the LTD Plan and to clarify her right to future benefits under  
8 the terms of the LTD Plan.

9  
10 **REQUEST FOR RELIEF**

11 WHEREFORE, Plaintiff prays for relief against Defendants as follows:

- 12 1. Payment of disability benefits due Plaintiff;  
13 2. An order declaring that Plaintiff is entitled to immediate reinstatement to  
14 the LTD Plan, with all ancillary benefits to which she is entitled by virtue of her  
15 disability, and that benefits are to continue to be paid under the LTD Plan for so long  
16 as Plaintiff remains disabled under the terms of the LTD Plan;  
17 3. Pursuant to 29 U.S.C. § 1132(g), payment of all costs and attorneys' fees  
18 incurred in pursuing this action;  
19 4. Payment of prejudgment and postjudgment interest as allowed for under  
20 ERISA; and  
21 5. Such other and further relief as this Court deems just and proper.

22  
23  
24 DATED: June 4, 2008

KANTOR & KANTOR, LLP

25  
26 By: 

27 Peter S. Sessions  
28 Attorneys for Plaintiff  
Christine Gilmour

ORIGINAL

CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Christine Gilmour

DEFENDANTS

Aetna Life Insurance Company, Circuit  
City Stores, Inc. Long Term Disability  
Plan

(b) County of Residence of First Listed Plaintiff Monterey County  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Connecticut  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Alan E. Kassan Tel#: (818) 886-2525  
Peter S. Sessions  
KANTOR & KANTOR, LLP  
19839 Nordhoff Street  
Northridge, CA 91324

C08 02803

RS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 382 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment				
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust				
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 424 Copyrights	<input type="checkbox"/> 430 Banks and Banking				
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 425 Patent	<input type="checkbox"/> 450 Commerce				
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 426 Trademark	<input type="checkbox"/> 460 Deportation				
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 427 Selective Service	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations				
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle		<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 428 Securities/Commodities/Exchange	<input type="checkbox"/> 480 Consumer Credit				
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 429 Cable/Sat TV	<input type="checkbox"/> 490 Cable/Sat TV				
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 430 Selective Service	<input type="checkbox"/> 510 Selective Service				
<input type="checkbox"/> 190 Other Contract				<input type="checkbox"/> 431 HIA (1395ff)	<input type="checkbox"/> 550 Securities/Commodities/Exchange				
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 432 Black Lung (923)	<input type="checkbox"/> 575 Customer Challenge 12 USC 3410				
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 433 DIWC/DIWW (405(g))	<input type="checkbox"/> 590 Other Statutory Actions				
				<input type="checkbox"/> 434 SSID Title XVI	<input type="checkbox"/> 591 Agricultural Acts				
				<input type="checkbox"/> 435 RSI (405(g))	<input type="checkbox"/> 592 Economic Stabilization Act				
					<input type="checkbox"/> 593 Environmental Matters				
					<input type="checkbox"/> 594 Energy Allocation Act				
					<input type="checkbox"/> 595 Freedom of Information Act				
					<input type="checkbox"/> 596 Appeal of Fee Determination Under Equal Access to Justice				
					<input type="checkbox"/> 597 Constitutionality of State Statutes				

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. §1132 Failure to Pay Plan Benefits

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

☐ CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE

June 4, 2008

SIGNATURE OF ATTORNEY OF RECORD

Peter S. Sessions

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

NDC-JS44